

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In The Matter of: FELICITY HARMONY LIMITED,
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Respondent.

HUDALJ 01-035-CMP
Decided: June 7, 2001

Brendan Power, Esq.
For the Government

Before: WILLIAM C. CREGAR
Acting Chief Administrative Law Judge

DEFAULT DECISION AND ORDER

On March 16, 2001, the Secretary of the United States Department of Housing and Urban Development ("HUD") through the Departmental Enforcement Center filed a Complaint seeking a civil money penalty of \$27,500 against Felicity Harmony Limited ("Respondent"), pursuant to section 537 (c) of the National Housing Act, 12 U.S.C. § 1735f-15(c), and the applicable regulations under 24 C.F.R. Part 30. The Complaint charges that Respondent knowingly and materially failed timely to submit an audited annual financial statement to HUD for fiscal year 1998, as required by its Regulatory Agreement with HUD. The Complaint notified Respondent of its right to appeal the imposition of the civil money penalty by filing an answer within 15 days of receipt of the Complaint, and that failure to file an answer could result in a default judgment and imposition of the penalty sought. *See* 24 C.F.R. §§ 30.90(b); 26.39. Respondent received a copy of the Complaint on March 19, 2001, but failed to file an answer.

On May 3, 2001, HUD served a Motion for Default Judgment on Respondent. Respondent failed to respond to the Motion. Accordingly, the Motion is *granted*.

Findings of Fact¹

1. Respondent is a for-profit limited partnership and owns a multi-family housing project located in New Orleans, Louisiana. The property was built and financed with a loan insured against default by HUD under Section 221(d)(4) of the National Housing Act. In exchange for receiving the benefits of a loan insured by HUD, Respondent by its President, Keith Butler, executed a Regulatory Agreement on December 29, 1988. Complaint, ¶¶ 2, 8.

2. In the Regulatory Agreement, Respondent agreed to certain controls over the management and operation of the project. Paragraph 9(e) of the Regulatory Agreement requires Respondent to provide HUD with a complete audited financial statement, prepared in accordance with the requirements of HUD, within 60 days after the completion of the fiscal year. Complaint, ¶ 9.

3. The project's fiscal year ends on December 31; therefore, the audited financial statement for 1998 was due March 1st of the following year. HUD extended this date to August 31, 1999. Consequently, the audited financial statement for fiscal year 1998 was due on August 31, 1999. Complaint, ¶¶ 10, 11.

4. The audited financial statement for fiscal year 1998 was never submitted. Complaint, ¶ 12.

5. Respondent's failure to provide the audited financial statement to HUD on time violates paragraph 9(e) of the Regulatory Agreement. Complaint, ¶ 13.

6. On November 12, 1999, HUD provided Respondent with a written notice ("Notice") that it intended to seek a civil money penalty against Respondent because of its failure to submit, in a timely manner, the required audited financial statement for fiscal year 1998. Complaint, ¶ 14.

7. The Notice offered Respondent an opportunity to reply in writing within thirty days of receipt. The Notice was sent by certified mail to Keith Butler. Although Mr.

¹HUD regulations provide that a default shall constitute an admission of all facts alleged in HUD's Complaint, as well as Respondent's waiver to any right to a hearing on these allegations. 24 C.F.R. § 26.39(c).

Butler did telephone HUD's Enforcement Center after the Notice was sent, to date HUD has not received a written response to the Notice. Complaint, ¶¶ 15-16.

8. Officials of HUD's Enforcement Center reviewed the allegations against Respondent and considered the factors set forth in 24 C.F.R. § 30.80, such as the gravity of Respondent's offense, any history of prior offenses, Respondent's ability to pay a penalty, injury to the public, benefits received by Respondent, and deterrence of future violations. After consideration of those factors, these officials determined that, pursuant to 12 U.S.C. § 1735f-15(c)(1)(B)(x) and 24 C.F.R. § 30.45(b), a civil penalty of \$27,500 was appropriate because of Respondent's failure to timely submit the 1998 financial statement. Complaint, ¶¶ 17-19.

Conclusion and Order

Respondent knowingly and materially violated 12 U.S.C. § 1735f-15(c) and its Regulatory Agreement with HUD by failing to furnish HUD in a timely manner an audited financial report for fiscal year 1998. After consideration of appropriate factors, HUD issued the Notice, and later, the Complaint seeking an order imposing civil money penalties of \$27,500. *See* 24 C.F.R. §§ 30.80; 30.85. Respondent failed to answer the Complaint, and therefore is in default. *See* 24 C.F.R. §§ 26.37; 26.38; 30.90(b). HUD filed a Motion for Default Judgment, which was received by this Office on May 3, 2001. Respondent has failed to file a response to the Motion for Default. Pursuant to 24 C.F.R. §§ 30.90, 26.37 and 26.39, it is

ORDERED, that

- (1) the Motion for Default Judgment is *granted*;
- (2) Respondent shall pay to the Secretary of HUD a civil money penalty of \$27,500, which is immediately due and payable by Respondent without further proceedings; and
- (3) This Order shall constitute the final agency action, pursuant to 24 C.F.R. § 26.39.

WILLIAM C. CREGAR

Acting Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this DEFAULT DECISION AND ORDER, issued by WILLIAM C. CREGAR, Acting Chief Administrative Law Judge, HUDALJ 01-035-CMP, were sent to the following parties on this 7th day of June, 2001, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL:

Mr. Keith Butler
Felicity Harmony Ltd.
1038 Upperline Street
New Orleans, LA 70115

INTEROFFICE MESSENGER:

Brendan Power, Government Counsel
Departmental Enforcement Center
U.S. Department of Housing and Urban Development
1250 Maryland Avenue, S.W., Room 200
Portals Bldg.
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